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ALBERICUS GENTILIS.

Modern international law is generally regarded as beginning with the Peace of Westphalia in 1648.¹ But it is necessary to go much further back in the history of the world for the beginnings of the law governing the intercourse of nations.² The Greek states had a rudimentary inter-state law that regulated their relations. Thus they practiced arbitration in a way among themselves:³ they recognized the sanctity of the person of heralds,⁴ and they followed other recognized customs in their dealings one with another.⁵ When Rome and Carthage and other nations were struggling for the mastery of the world, the beginnings of a law of nations were recognized and practiced between them. Upon, however, practically all the known world coming under the sway of imperial Rome, all possibility as well as need of a law of nations was wanting, and as a result the faltering beginnings of an international law as recognized among the Greek states and then by the Powers surrounding the Mediterranean, were extinguished by the extension of the *Pax Romana* to all the known world.

Then the Roman Empire fell before the rising tide of invasion of the various barbarous races of northern Europe. Out of the re-

¹ Henry Wheaton: *History of the Law of Nations in Europe and America*, New York, 1845, p. 69; Charles Calvo: *Le Droit International Théorique et Pratique*, cinquième édition, Paris, 1896, Vol. I, p. 35; John Westlake: *International Law*, Cambridge, England, 1904, Vol. I, p. 44; James Brown Scott: *The Hague Peace Conferences of 1899 and 1907*, Baltimore, 1909, Vol. I, p. 12.

² Henry Sumner Maine: *International Law*, New York, 1888, pp. 15-16, 27 *et seq.*; Ernest Nys: *Les Origines du Droit International*, Brussels, 1894; Lassa Oppenheim: *International Law*, London, 1905, Vol. I, pp. 44-57; Walther Schücking: "L'Organisation Internationale," *Revue Générale de Droit International Public*, Paris, 1908, p. 5 *et seq.*

³ Thomas Willing Balch: *L'Evolution de l'Arbitrage International*, Philadelphia, 1908, p. 12.

⁴ Henry Wheaton: *History of the Law of Nations*, New York, 1845, p. 3.

⁵ Charles Calvo: *Le Droit International Théorique et Pratique*, cinquième édition, Paris, 1896, Vol. I, p. 4.

sulting chaos there gradually grew up a personal relation between superior and inferior based upon the exchange of protection given by the former for services rendered by the latter.⁶ That arrangement, crystallizing into the feudal system, prevented for centuries the rise of nationalities.

Thus communities of men at a distance from one another, belonging perhaps to races speaking not only different idioms, but even totally different languages, were, by the allegiance that they owed to one common superior lord, parts of the same general political unit.⁷ In this way the German princely house of Wurttemberg held for centuries until comparatively recent times the French-speaking county of Monbéliard. It was upon this personal allegiance of subjects to their feudal lord or mistress, as the case might be, that Charles the Eighth of France, by marrying the Duchess Anne of Brittany, succeeded for the time being in incorporating into the possessions of the French crown the Celtic-speaking Duchy of Brittany. And Anne, as the sole heiress of the Dukes of Brittany, would have passed the title to her son, who, had he lived, would have become also King of France.⁸ As the three sons of this marriage died in infancy, however, the successor of Charles the Eighth, his cousin, Louis the Twelfth, who had married Jeanne, a sister of Charles, divorced his wife upon succeeding to the crown, so that he might marry Anne of Brittany, in order to continue the incorporation of the Duchy with the possessions of the crown. Upon the death of Anne, the Duchy passed — but the Kingdom of France did not — to the daughter of this royal couple, Claude de France, they having no son. Claude de France married her cousin, François de

⁶ Émerie Crucé: *Le Nouveau Cynée*, Paris, 1623, Réimpression du texte original de 1623 avec introduction et traduction anglaise par Thomas Willing Balch, Philadelphia, Allen, Lane and Scott, 1909, p. 146 [229]; T. J. Lawrence: *Principles of International Law*, Boston, 1900, p. 36.

⁷ Anatole France de l'Académie Française: *Vie de Jeanne d'Arc*, Paris, 1908, pp. 19, 95, 115.

⁸ Robert Ward: *An Enquiry into the Foundation and History of the Law of Nations in Europe from the time of the Greeks and Romans to the Age of Grotius*, Dublin, 1795, Vol. II, pp. 149 and 151; Sir Henry Sumner Maine: *Early Law and Custom*, London, 1883, p. 158.

Valois, Count of Angoulême, who became Francis the First of France. And their son, Henry the Second, upon the death of his parents, united finally the Kingdom of France and the Duchy of Brittany in his person as King of France and Duke of Brittany, though Brittany was not actually incorporated with France until 1598.⁹

The principles of the feudal law answered the requirements of the personal relations upon which the feudal system was built. And so long as there were no constituted nations there was no need for a law of nations.¹⁰ Gradually, however, earlier in western than in central and eastern Europe, the idea of a common national unit began to assert itself. And so the need for customs and practices regulating the relations between the representatives of these national unities increased. For instance, the idea that knights and men at arms captured in battle were the prisoners not of their immediate captors, but of the sovereign of those captors gradually gained ground.¹¹ Writers began to note and to expatiate more and more upon such practices.

The impulsion towards the formation of independent and sovereign nations such as constitute the members of the family of nations to-day, received an immense impetus from the Reformation.¹² That great religious schism, in challenging the claim of the Papacy to universal sovereignty, both in the temporal and the spiritual world, naturally resulted in the formation of sovereignties that acknowledged no earthly superior. Consequently, it is not surprising that one of the first publicists to cast off the bonds of the church as a universal superior to which the publicists of the Middle Ages generally had subscribed, and to advocate a system of law in which the

⁹ F. P. G. Guizot: *L'Histoire de France*, Paris, Vols. II and III; Carl Ploetz: *Epitome of Ancient Mediæval and Modern History*, Boston, 1884, pp. 318-319.

¹⁰ L. Oppenheim: *International Law*, London, 1905, Vol. I, p. 54.

¹¹ Ernest Nys: *Notes pour servir à l'Histoire Littéraire et Dogmatique du Droit International en Angleterre*, Première Partie, Brussels, 1888, pp. 129-132; Thomas Alfred Walker: *A History of the Law of Nations*, Cambridge University Press, 1899, Vol. I, pp. 132, 189.

¹² Henry Sumner Maine: *Ancient Law*, London, 1861, p. 110; James Bryce: *The Holy Roman Empire*, London, 1889, p. 325 *et seq.*

various members were treated as equals, was a Protestant. But it is surprising that he should have been a son of one of the countries that remained faithful to the old religion instead of embracing the new, that he should have been a Latin and not a Teuton nor an Anglo-Saxon.¹³

An Italian by birth, an Englishman by adoption, Albericus Gentilis, as he is known to the world by the Latin form of his name, Alberico Gentili, as he is known to his countrymen, who have made tardy recognition of his worth, devoted much of his time and labor to expound the new science needed to regulate the every-day relations between the newly formed nations of Europe.¹⁴

As Professor Holland tells us in the lecture on Gentilis with which he opened in 1874 his teaching at Oxford of international law, Albericus Gentilis, a member of a noble Italian family, was born January 14, 1552, at Castello di San Ginesio, an ancient though small town of the march of Ancona on the eastern side of the Appennines.¹⁵ His father, Matteo Gentili, a physician, sent him to the University of Perugia on the other side of the mountains. There he became, on September 22, 1572, a doctor of laws. A few months later he was chosen "praetor" or judge at Ascoli, but soon afterwards he returned to his native San Ginesio. Held there in high honor, he was elected in 1575 to the office of advocate. But his father, who had joined the ranks of the religious reformers

¹³ Thomas Erskine Holland: *Studies in International Law*, Oxford, 1898, p. 1 *et seq.*; Ennio Agabiti: *Alberico Gentili fondatore della scienza del Diritto Internazionale*, Fermo, 1908; Luigi Rava: *Alberico Gentili: discorso pronunciato all'inaugurazione del monumento in Sanginesio (26 Settembre, 1908)*, Rome, 1908; *Per Alberico Gentili nel III centenario della sua morte*, Numero Unico a cura del Comitato compilato da Nada Peretti e Giacomo Ferroni, Rome, 1908.

¹⁴ Pasquale Fiore: *Nouveau Droit International Public* (translated from the Italian by Charles Antoine), Paris, 1885, Vol. III, pp. 160-162; Thomas Erskine Holland: *Studies in International Law*, Oxford, 1898, p. 58.

¹⁵ Thomas Erskine Holland: *Alberico Gentilis*, a lecture first delivered at All Souls College, Oxford, November 7th, 1874, reprinted in *Studies in International Law*, Oxford, 1898, pp. 1-39. It was this lecture of Professor Holland in which he fortified his statements with a wealth of references to manuscripts and old books, that aroused new interest in the work of the Italo-English international jurist which resulted in marked honor being paid to his memory, first in the country of his adoption and afterwards in that of his birth.

within the church, gradually found that his Protestant faith was in danger. So he proposed to his wife that they should leave their native land for other regions where the religious reformers were not in danger of losing their lives for professing their faith. She, however, clinging still to the old religious beliefs, refused for herself and their younger children, while consenting to her husband's departure and that of their oldest child, Albericus. So the two started in 1579 for Austria, soon being followed by the youngest of the seven children, Scipio, then only sixteen years old. The religious refugees found a temporary asylum in Carniola, part of the Austrian dominions. Prospering there for a time as a physician, the father sent his youngest son to Germany to complete his studies, and the elder to England to turn his abilities and learning to account.

Albericus Gentilis arrived in the realm of Queen Elizabeth probably in August, 1580. Through the good offices of another Italian religious refugee, Giulio Borgarucci, physician to the Earl of Leicester, supported by Dr. Tobie Mathew, who had become in the previous year Vice-chancellor of Oxford University, and who afterwards was appointed Bishop of Durham and then Archbishop of York, Albericus Gentilis was presented to the Earl. The latter, who had been Chancellor of the University since 1564, gave the Italian doctor a letter of introduction to the authorities of Oxford.¹⁶

Received into New Inn Hall, and granted small stipends from several colleges, he was incorporated a doctor of the civil law, and at once began to write, producing many works on various topics.

In the year 1584 the English Government had on its hands the case of the ambassador of Philip the Second of Spain, Mendoza. The ambassador was discovered to have plotted against the throne of the sovereign to whom he was accredited. The government, in its desire to act wisely in dealing with this difficult and embarrassing case, consulted the Italian refugee doctor at Oxford and John Hotman, a French jurisconsult, celebrated for his knowledge of

¹⁶ Alberici Gentilis, I. C. D., I. C., Professoris Regii, *De Iure Belli Libri Tres*, editit Thomas Erskine Holland, I. C. D., *Juris Gentium Professor Chicheleianus*, Oxford, 1877, p. VIII.

law.¹⁷ Both doctors urged the English Government, contrary to the advice that English civilians had given it earlier in Elizabeth's reign in the case of Leslie, Bishop of Ross,¹⁸ to conduct Mendoza to the frontier and send him back to Spain. How sound the advice of the two doctors was, the lapse of more than three centuries of time has abundantly proven. And the opinion that they then gave to Elizabeth and her counsellors is to-day an established rule of the law of nations against which no responsible Power would dare protest, much less act.

Active participation in this grave case led Gentilis to study the general rights of ambassadors more fully. In that same year when the Earl of Leicester and Sir Philip Sidney visited the University, Gentilis chose the subject of embassies as his topic for a disputation. This he expanded into a book, *De Legationibus*, published in 1585, which he dedicated to Sir Philip Sidney.

By Walsingham's influence, Gentilis was induced to leave Oxford in the autumn of 1586 to accompany Horatio Pallavicino in an embassy to the court of Saxony. The next year, however, Walsingham and Leicester had Gentilis recalled and appointed to the Regius Professorship of Civil Law founded at Oxford by Henry the Eighth. This appointment naturally led the Italian doctor further afield in the study of the nascent law of nations.

After speaking at the "Act" of 1588 upon the law of war, Gentilis published his first "Commentary" relating to the law of war. This publication he dedicated to the Earl of Essex,¹⁹ as also the second and third "Commentaries" of the same work that were published

¹⁷ As a result of this case, Hotman published at Paris in 1602, "*Traité des devoirs de l'ambassadeur*." He was a son of the distinguished French jurist, Francis Hotman.

¹⁸ Edward Coke Milite: The Fourth part of the Institutes of the Laws of England: concerning the Jurisdiction of Courts, the Sixth Edition, London, 1681, Chap. XXVI, p. 152: "And in the Bishop of Rosse's case, Ann. 13 Eliz., the question being An legatus, qui rebellionem contra principem ad quem legatus concitat, legati privilegiis gaudeat, & non ut hostis poenis subjaceat. And it was resolved that he had lost the privilege of an Ambassador, and was subject to punishment."

¹⁹ Alberici Gentilis I. C. D., I. C. Professoris Regii, *De Iure Belli Libri Tres*, editit Thomas Erskine Holland, Oxford, 1877, p. XVII.

in the following year. In the second commentary Gentilis, following in the footsteps of many earlier publicists, has a good deal to say about good faith and something about humanely treating women, children and suppliants. Continuing to study the law and customs governing the intercourse of nations in time of war, Gentilis republished as a new work the three commentaries much enlarged and rewritten, in 1598, under the title, *De Jure Belli libri tres*. Another edition of this work was printed in 1604, and four years after the author's death still another, in 1612.

Continuing to write on questions of the day, such as remarriage, the lawfulness of stage plays, the extent of the royal power, the union of Scotland with England, Gentilis in the last three years of his life turned to the investigation of a third branch of the law of nations, the rights of belligerents and neutrals in time of war. To the study of this branch of international law, Gentilis was led by his assuming, in 1605, with the consent of King James the First, the position of advocate to the Spanish Embassy ("*honorifico salario constituto*"). When he assumed this office Spain and the Netherlands were at war, and England was neutral. Gentilis had to advise the Spanish Embassy in many cases and even argued some cases in its behalf before the English court of admiralty. His notes relating to these cases, involving the rights of belligerents and neutrals, were published in 1613 by Scipio Gentilis, five years after Albericus Gentilis's death at London, June 19, 1608.

The three works upon which Albericus Gentilis's fame as an international jurist rests, and his title to be considered as one of the founders of the science of international law, were all the result of the pressing questions of the day growing out of the relations of England with the other European Powers. Through these three works, which treat each in turn one of three several great divisions into which the science of international law is naturally divided, Gentilis makes his mark in each of these fields. The first of the three, *De Legationibus*, is divided into three books. In the first, the Oxford jurist gives the definition and history of legations; in the second he treats of the law of legations; and in the third he deals with the qualifications necessary for and the mode of conduct of an

ideal ambassador. In the second book, when he points out that any sovereign who breaks the law of nations by violating the persons of foreign ambassadors may expect retaliation upon the persons of his own representatives, he explains the force that has made the universal respect with which all nations bow to the law of nations applying to ambassadors and their staffs.

In the second of his works relating to the law of nations, *De Jure Belli libri tres*,²⁰ Gentilis likewise, in expounding the law of war, treats of the live questions of the day as they affected the relations of England and other European Powers. The first book of this work deals with what precedes and justifies war, the second treats of the rules of conduct that nations should follow in waging war, and the third expounds the ways in which war is ended. In this work he succeeded in freeing the subject of the law of nations from entanglements with many other branches of science. Drawing at all times liberally upon history, custom and the scholars of the world — Plato, Aristotle, Plutarch, Xenophon, Cicero, Baldus, Sir Thomas More, Bodin, and a host of others — Gentilis presents clearly the rules of conduct that nations should follow in dealing with one another, either in beginning war, or waging it, or bringing it to a close. He does not allow himself, in presenting his views, to become entangled as Balthazar Ayala did, in extraneous subjects, such as theological discussions or military tactics.²¹ A few examples taken somewhat at random from the *De Jure Belli* will show how he explains and lays down the rules that should govern nations engaged in war. At the beginning of the second chapter of this work he defines war as follows: "War is a just contention of the public force" (*Bellum est publicorum armorum iusta contentio*).²² Then again, he maintains that while pirates may imitate the usages of

²⁰ Alberici Gentilis I. C. Professoris Regii, De IVRE Belli, Libri III. Nunc primum in lucem editi. Ad illvstrissimvm Comitem Essexiæ. Hanoviae, apud Hæredes Guilielmi Antonii. MDCXII. (Copy in the Library of the University of Pennsylvania.)

²¹ Thomas Erskine Holland: *Studies in International Law*, Oxford, 1898, pp. 54-55.

²² *De Iure Belli*: Book I, p. 17.

war and not those of assassins, nevertheless, that does not make them enemies in the real meaning of the word.²³

Though a Protestant and an exile, because of his religion, from his native Italy, he barely dares to sustain the Low Countries in their revolt against Philip the Second of Spain. In this he reflects the thought of his epoch. He, however, does approve of England's lending a helping hand to the United Provinces in their fierce struggle with Spain.²⁴

So, too, inspired by the policy of Elizabeth in proclaiming the freedom of the seas,²⁵ he maintains in a short passage that the sea is open to the commerce of all mankind. "Now about the sea," he says, "this, naturally, is open to all and there is a common usage of it for all. Therefore it can not be prohibited."²⁶ (*Nunc de mare. Hoc natura omnibus patet et communis eius usus omnibus est, ut aëris. Non igitur prohiberi a quoquam potest.*)

Against the protest of the Hollanders, that English warships had no right to stop the Dutch vessels carrying materials and supplies to Spain, which that country sorely needed to equip its war vessels against England, Gentilis supports the English position by arguing that, while the free commercial relations of the Netherlands with Spain are of great importance to the United Provinces, still the right of England to prevent her enemy, Spain, from obtaining the means and supplies with which to strike at England's existence is much more important and vital.

He says:²⁷

A great question. On this side a rigid law in favor of these (the Nederlanders), on that side equally in favor of the English. But who, nevertheless, is ignorant of the fact that in all things the law of equality is superior to a rigid law? That opinion is superior to something written? That a law is good and equitable? That it is more than favorable and more than useful? They do not wish the gain from commerce to be destroyed. The English do not wish anything to be done which is against

²³ *De Iure Belli*: Book I, p. 38.

²⁴ *De Iure Belli*: Book I, p. 124.

²⁵ Thomas Alfred Walker: *A history of the Law of Nations*, Cambridge, 1899, Vol. I, p. 161.

²⁶ *De Iure Belli*: Book I, p. 146.

²⁷ *De Iure Belli*: Book I, p. 164.

their own safety. The law of commerce is equitable: but this (law) of guarding safety is more equitable. That is the law of nations: this is the law of nature. That is the law of private citizens: this the law of Kingdoms. Therefore let traffic yield to Kingdom, man to nature, and money to life.

Commenting on this passage the South American juriconsult, Charles Calvo, says:²⁸

These words offer an evident contradiction between the Law of Nature and the Law of Nations. On another side, to recognize trading in contraband of war, as Gentilis makes it felt, as a right belonging exclusively to the belligerents, is, finally, to sanction the most exorbitant arbitrary acts and the most unqualified abuses.

While, since Gentilis wrote, the law of neutrality has gradually evolved far beyond the meagre practice that obtained in the latter part of the sixteenth century so as to impose more and more restraints and duties on both belligerents and neutrals, all the while ensuring with more and more guarantees against interference a continuance of neutral trade other than contraband of war, yet nevertheless on the main issue involved by neutrals trading with belligerents, the practice of nations has been practically in accord with this opinion of Gentilis. For nations at war, except those weak on the ocean, have tried to prevent neutrals from carrying on the sea supplies necessary and helpful to their opponents in the waging of the war.

Treating of strategem and deceit in war, Gentilis differentiates between the two.²⁹

In the twenty-second chapter of the second book entitled "On farmers, merchants, foreigners and others of similar character,"³⁰ Gentilis argues in favor of the immunity from injury and capture in times of war of farmers and their cattle and those who do not aid the enemy in any way, and cites the opinion and practice of former publicists, public officials and sovereigns in support of his opinion. Also merchants who happen to be trading in or passing through an enemy's country when war breaks out, he maintains

²⁸ Charles Calvo: *Le Droit International Théorique et Pratique*, Paris, 1896, Vol. V, p. 3.

²⁹ *De Iure Belli*: Book II, p. 228.

³⁰ *De Iure Belli*: Book II, p. 427.

should not be treated as enemies. In this chapter he points out likewise that foreign territory protects all property of the citizens of one of two belligerent nations against the exactions of the other. "It is handed down," he says, "that property captured in another's territory does not become the property of the captors and so must be restored to the owner of the territory if he rules it: and it is restored." Those, however, who, whether noble or burgher, aid the enemy, as for example the Hanse merchants who carried to the Spaniards supplies which the latter sorely needed for the equipment of their war vessels, Gentilis holds come within the category of enemies. He says:

Therefore, a foreigner must see to it that he do nothing of his own will that aids the enemy, for in that way he would make himself an enemy: none the less than any one else who brings aid to the enemy whatsoever. * * * They were excommunicated from the Roman Council and deprived of their property and even made servants of their captors who transported to the Saracens wares adopted for fighting the Christians or who even supplied ships to aid the Saracens. He should be considered an enemy who does what pleases the enemy. And he is in the army of the enemy who gives to the army of the enemy things necessary for war. Which Queen Amalasuintha answered to Justinian. And so Queen Elizabeth replied when the Hanseatic States complained that their ships were robbed by the English fleet in spite of the treaty, by which it was taken care that those states might not be able safely to be friendly to the enemies of England and to have commerce with them.

In the third of the works of Gentilis relating to a phase of the law of nations, *Hispanicae Advocationis libri duo*, the result of his pleadings in behalf of Spain before the English court of admiralty, he shows the mind of a master well grounded in the subject that he has in hand. He says that sovereignty is territorial and that consequently the English king, during the war between Spain and The Netherlands, can afford an asylum to the Spanish vessels who, flying before the ships of the Hollanders, have sought his protection.

By advocating the rights of neutrals to maintain peace within their jurisdiction, Gentilis was leading public opinion. At the time he wrote and for many years afterwards the practice of neutrality was practically unknown.³¹ Thus, for instance, a score of years after

³¹ John Westlake: *International Law*, Cambridge University Press, 1907, Vol. II, p. 169 *et seq.*

the death of Gentilis, Gustavus Adolphus, during his memorable two years campaign in Germany, in answer to the Elector of Brandenburg having declared himself neutral as between the Swedish King and the German Emperor in the contest then raging within the Empire, replied: "Neutrality! What kind of a thing is that? I do not know it. It is of no account." ("Was ist das für ein Ding: Neutralität? Ich verstehe es nicht. Es ist nichts damit.")³² Gentilis also anticipated Grotius as other jurists anticipated Gentilis in striking a blow for more humane practices in the treatment of individuals in war. In the seventeenth³³ and twenty-first³⁴ chapters of the second book of his treatise, *The Law of War*, Gentilis pleads ardently that the lives of prisoners of war should be spared and that old men, women, maidens and children should not be harmed. A generation later, many of the humane precepts that Grotius urged in his great work were adopted and acted upon by Gustavus Adolphus in the Thirty Years War. While that far-sighted statesman and commander did not act upon all the rules that the Dutch juriconsult urged upon nations to adopt so as to mitigate the hardships and cruelties of war, yet it undoubtedly influenced him. Thus, during the two years he took part in that cruel war, which resulted in the course of only thirty years in the reduction of the population of the Germanic Empire by over a half, the King of Sweden would not allow his soldiers, like the other commanders on both sides, wantonly to plunder nor to torture defenseless inhabitants. He insisted that they should pay for whatever they took. And what a splendid act, in the face of the provocative destruction of Magdeburg and the slaughter of its inhabitants by Tilly and the army of the League, was the restraint shown by Gustavus Adolphus in sparing Munich and its citizens.³⁵ Yet some of the credit for this noble action undoubtedly redounds to the Swedish sovereign's teacher,

³² Ernest Nys: *Etudes de Droit International et de Droit Politique*, Brussels, 1901, p. 73.

³³ *De Iure Belli*: Book II, p. 351.

³⁴ *Ibid.*, p. 409.

³⁵ T. A. Dodge: *Gustavus Adolphus*, New York, 1895, Vol. I, p. 321. To Munich, Gustavus said: "I could inflict on you the penalties of Magdeburg — but fear not, my word is worth more than your capitulation papers."

Grotius. A generation earlier, however, the teachings of Gentilis in his second commentary, published in 1589 and dedicated to the Earl of Essex, in which Gentilis speaks about good faith and the humane treatment of women, children and suppliants, were reflected in a more developed form in the instructions issued on June 15, 1597, to the Earl of Essex as he was about to start on the "Island Voyage." The next year Gentilis's more ample views in favor of sparing the lives of prisoners of war and not maltreating old men, women, maidens and children were published in his treatise, *The Law of War*.

From these few examples it becomes clear how Gentilis expounded, often in a hesitating way, it is true, and frequently also in a meagre manner, the rules of law applicable to times of war. Nevertheless, he did expound those rules of conduct, basing them upon the customs and practices current in his time, and the opinions of former scholars. And he applies these rules of war to the live questions of the day, especially as they affected the interests of his adopted country, England. The accusation has been often leveled at Gentilis by publicists of other lands that he interpreted the law of war so as to favor his adopted country. But so have jurisconsults of other lands in expounding the law of nations often maintained the rights of their own nation as against its opponents.

The ideas advocated by Gentilis were in many respects far and away ahead of his contemporaries. The passage of time has amply justified him for holding for the period in which he lived liberal views. Though in large measure forgotten and decidedly overshadowed for more than two centuries and a half by the phenomenal homage accorded in Europe to the larger work of Hugo Grotius, *De Jure Belli ac Pacis*, it must not be forgotten that the work of the Italian, an adopted son of England, prepared the ground for the more complete work of the Hollander.

Grotius himself acknowledged his great indebtedness to Gentilis, and as Hallam has pointed out, the arrangement of the first and third books of Grotius's treatise on *The Law of War and Peace* is practically the same as that of the work of Gentilis on *The Law of War*. No science springs all-developed at one bound from the brain of a

single man. It advances and developes slowly. And in this birth and growth of a science international law is no exception. Its beginnings can be traced from far back through the civilians and the canonists until the growth of nationalities into separate bodies who did not acknowledge one common superior or overlord necessitated a law of nations. It was one of these early writers who preceded Gentilis, the Spaniard, Francis of Vitoria, who seems to have given to the science its name, *Jus Inter Gentes*. Used later, in 1650 by Richard Zouche after Gentilis and Grotius were both dead, this name was subsequently rendered into French by Chancellor d'Aguesseau, "*Droit entre les Gens*," and into English by Jeremy Bentham, "*International Law*." Picking up the various threads that touched on the relations of the newly constituted nations, and separating them from extraneous materials, Albericus Gentilis seems to have been one of the first publicists who actually expounded the existence of this new jural science. Without detracting in any way from acknowledging the profound influence for good exerted by Grotius on humanity by his writings — especially the treatise *De Jure Belli ac Pacis*, a book that has had a greater influence on the occidental world probably than any other work, except the collection called the Bible — justice demands that some homage be rendered by the world to the Oxford scholar, a son of Italy, who preceded the Hollander. In the apt words of Rolin-Jaequemyns:

Gentilis and Grotius are not, must not be two glories jealous of one another: they are two stars each endowed with a light of its own or rather which it borrows from a common center, that of eternal justice and truth.

As a result of making known to Oxford men in 1874 the work of Gentilis, Professor Holland, through a copy of his pamphlet on Gentilis coming into the hands of the Italian publicist, Mancini, indirectly aroused Italy to recognize and honor her forgotten and exiled son, who to her own detriment she had forced to fly for refuge to the more liberal atmosphere of England.

The whirligig of time, however, often has its revenge. Fortunately it has happened so in this case. Three hundred years after the death of Albericus Gentilis, in June, 1608, who held the chair of

civil law founded at Oxford by Henry the Eighth, Professor Holland, who held the Chichele chair of international law in that ancient seat of learning from 1874 to 1910, assisted by official invitation, in September, 1908, at the unveiling in San Ginesio of a bronze statue of Albericus Gentilis on the Piazza Alberico Gentili. At that ceremony Signor Rava, Minister of Education, spoke as the representative of the Italian nation. Thus, when Gentilis at length found proper recognition for his work at the hands of his fellow townsmen, both the nation of his birth and that of his adoption were represented by men of more than mere local renown. And so finally the Italo-English jurist is coming into his own, and the world is beginning to recognize him as one of the first pioneers in the long line of international jurists, properly so called, whose labors have tended not only little by little to make the horrors of war less terrible, but also by defining the rules and regulations, growing often out of uncertain customs, that obtain in the intercourse of nations, gradually to substitute more and more a durable peace among the nations for a state of war. Though Grotius by his direct influence on Christendom is regarded as the father of international law, nevertheless, as Holland truly says, an earlier "step towards making international law what it is, was taken * * * by the Perugian refugee, the adopted son of Oxford, Albericus Gentilis."

THOMAS WILLING BALCH.